

1  
2  
3  
4  
5  
6  
7 **BEFORE THE INSURANCE COMMISSIONER**  
8 **OF THE STATE OF WASHINGTON**

9 NO. G02-45

10 In the Matter of the Application  
11 Regarding the Conversion and  
12 Acquisition of Control of Premera Blue  
13 Cross and its Affiliates,

FIFTH ORDER: SETTING STATUS  
CONFERENCE; ADDRESSING  
CERTAIN DISCOVERY MATTERS;  
AND REVISING FILING  
REQUIREMENTS

14 On March 3, 2003, a pre-hearing conference was held at the Tumwater City Council  
15 Chambers in Tumwater, Washington. Pursuant to the Fourth Order issued in this matter,  
16 Premera, the Office of the Insurance Commissioner (OIC) Staff, and the Intervener Groups  
17 (hereinafter collectively referred to as the "Parties") met prior to the conference and filed a  
18 Joint Proposal Regarding Discovery and Hearing Schedule ("Joint Proposal"). The Joint  
19 Proposal identifies areas of both agreement and disagreement among the Parties regarding the  
20 discovery process and schedule. Premera and the OIC Staff also filed a First Joint Status  
21 Report of OIC Staff and Premera Blue Cross and its Affiliates ("First Joint Status Report"),  
22 which addresses the progress of the gathering of data and information from Premera by the  
23 OIC Staff and its experts. The First Joint Status Report shows significant progress since the  
24 filing of the previous status reports regarding data and information collection from Premera.  
25 However, there are still disputes regarding the sharing of certain documents, without which  
26

1 the OIC Staff asserts its experts cannot conduct a thorough and proper analysis of the  
2 proposed transaction.

3 I want to acknowledge the efforts of all the Parties in trying to reach common ground  
4 on these procedural issues and in offering various alternatives for my consideration. This  
5 Fifth Order will not address all of the issues raised in the Joint Proposal and at the pre-hearing  
6 conference. Rather, the purpose of this Order is to resolve certain matters of immediate  
7 concern. Subsequent orders will be issued on the remaining issues.

8 **1. Next Status Conference**

9 A status conference will be held on March 24, 2003, from 10:00 a.m. to 12:00 p.m. in  
10 the Training Room on the First Floor of the Office of the Insurance Commissioner, 5000  
11 Capitol Boulevard, Tumwater, WA 98512. The Parties were informed of the date and time of  
12 the conference prior to the issuance of this Order. The conference is open to the public. There  
13 are two primary issues that will be addressed at the conference: (1) the progress of data and  
14 information collection by the OIC Staff and its experts from Premera; and (2) the status of the  
15 drafting of confidentiality agreements and proposed protective order.

16 In order for the Parties to move to the next phase of these proceedings, the OIC Staff  
17 and its experts must be in possession of or have access to the information and documents they  
18 need to prepare reports on their review of the proposed transaction. While the OIC Staff and  
19 its experts may need additional information from Premera during the course of these  
20 proceedings, I must be assured they have at least substantially all of the information they have  
21 thus far requested before I institute a discovery and hearing schedule. Therefore, on or before  
22 March 21, 2003, Premera and the OIC Staff shall file a Second Joint Status Report identifying  
23 those documents or categories of documents that Premera has not produced. In the Joint Status  
24 Report, Premera shall explain the reasons the documents have not been produced, and whether  
25 their production is covered or could be covered by a confidentiality agreement between  
26 Premera and the OIC Staff and its experts. The OIC Staff shall explain how the absence of

1 such documents will impair or impede the Staff and its experts from conducting a proper  
2 review of the transaction.

3 At the conference on March 24, 2003, the Parties shall be prepared to discuss the status  
4 of confidentiality agreements and proposed protective order, particularly with respect to the  
5 Interveners' access to documents. If confidentiality agreements have not been entered into as  
6 of the date of the conference, the Parties should be prepared to provide a date by which such  
7 agreements will be finalized.

## 8 **2. Special Master**

9 The parties have agreed to the appointment of a Special Master to handle discovery  
10 matters and have also agreed to three proposed candidates. I shall appoint a Special Master  
11 from the list of three offered by the Parties based on my own selection process. Premera shall  
12 bear the costs of the Special Master, and agreed to do so in advance of this Order being issued.  
13 In the Joint Proposal, the Parties outline a process for presenting matters to the Special Master  
14 and discuss, with some disagreement, what sanctions, if any, should be imposed if a Party  
15 abuses the discovery process. In a subsequent order appointing a Special Master, I will address  
16 these issues.

## 17 **3. Opportunity for the Interveners to Interview the States' Consultants**

18 The Interveners have requested the opportunity to interview outside of the formal  
19 discovery process the Consultants retained by the OIC Staff. They also ask that Premera bear  
20 the expense of the interviews. The Interveners have asserted that they need to conduct such  
21 interviews "in order to clarify the scope of the Consultants' work and assist the Interveners to  
22 ensure that the evidence produced by their experts does not duplicate that offered by the States'  
23 Consultants. The Intervener groups are concerned that if they delay their experts' work on the  
24 Health Impact Evaluation until the OIC Staff draft reports are available, their experts may not  
25 have sufficient time to complete the evaluation." Joint Proposal at 17. The OIC Staff does not  
26 object to interviews but underscores the condition that the interviews shall be about the scope

1 of the States' Consultants work and not about preliminary analysis and opinions. The OIC  
2 Staff also requested, because the interviews are not part of the formal discovery process, that  
3 they should not be used in any manner as evidence in the case. Premera opposes such  
4 interviews; and if they are allowed, objects to paying for the States' Consultants time.

5 The premise of my ruling allowing the Interveners to participate in these proceedings is  
6 that they will "offer information or expertise different or beyond that being offered by Premera  
7 and the OIC Staff." Fourth Order: Ruling on Motions to Intervene at 3. It will not assist me in  
8 reviewing the proposed transaction if the Interveners' experts simply cover the same ground as  
9 the other experts involved in this matter. I believe informal interviews conducted early on in  
10 these proceedings so that the Interveners' experts can produce timely and useful reports is  
11 reasonable. In addition, I have determined that pursuant to RCW 48.31C.030(5)(b) the  
12 Consultants' time associated with giving such interviews is an expense that Premera should  
13 bear.

14 There are conditions on these interviews. The subject matter of the interviews is as to  
15 the scope of the Consultants' work and is not to seek preliminary analyses or opinions from the  
16 Consultants. The Interveners' experts may ask questions of the States' Consultants. The  
17 Intervener Groups may select one attorney from their lead attorneys who may also ask  
18 questions. Representatives from the OIC Staff and Premera may be present during the  
19 interviews. The interviews may be conducted by telephone. As the Consultants are acting at  
20 the direction of the OIC Staff, the OIC Staff representative may direct a Consultant not to  
21 answer any question that goes beyond the area of inquiry allowed by this Order. No single  
22 interview may last more than 1 hour. Cumulatively, all of the interviews may last no more  
23 than 8 hours. Nothing said in the interviews by the Consultants or party representatives may be  
24 used as evidence. As the Interveners and the OIC have agreed, Joint Proposal at 18, the  
25 interviews will not be conducted until confidentiality agreements and a protective order are in  
26 place.

1  
2  
3 **4. Revised Filing Requirements**

4 The Parties have asked that the requirements for filing originally set forth in the First  
5 Order be revised in order to reduce the volume of paper being submitted and to formalize a  
6 service list now that the Intervener Groups have been identified. The Parties' suggestions are  
7 appreciated and adopted as follows.

8 a. Each Party shall serve each other Party a copy of each pleading or other  
9 document filed with the Insurance Commissioner. The Parties have agreed that service on  
10 them may be via fax. They have also agreed that voluminous attachments may be omitted  
11 from the faxed copy and sent via overnight delivery.

12 b. Service shall be effective by serving the following individuals: (i) for  
13 Premera serve on Thomas E. Kelly, Jr. and John P. Domeika; (ii) for OIC Staff serve on John  
14 Hamje and James Odiorne; (iii) for Premera Watch Coalition serve on Eleanor Hamburger;  
15 (iv) for WSMA serve on Jeff Coopersmith; (v) for University of Washington serve on Dina L.  
16 Yunker; (vi) for the Hospital Associations serve on Michael Madden; and (vii) for Alaska  
17 Interveners serve on Amy McCullough.

18 c. The original and five copies (one copy consisting of an electronic  
19 version) shall be filed with the Insurance Commissioner. The electronic version may be  
20 submitted on a diskette, or sent via e-mail to the attention of Carol Sureau. The subject line of  
21 the e-mail message must include the Words "Premera - Official Filing."  
22

23 **IT IS SO ORDERED**, this 14<sup>th</sup> day of March, 2003.  
24

25 \_\_\_\_\_  
26 MIKE KREIDLER  
INSURANCE COMMISSIONER